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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MARTIN RINCON,

Defendant and Appellant.

2d Crim. No. B266489
(Super. Ct. No. GA095441)
(Los Angeles County)

Martin Rincon appeals a judgment following conviction of driving with a 0.08 percent blood alcohol content within 10 years of a prior driving-under-the-influence conviction. (Veh. Code, §§ 23152, subd. (b), 23550.5.) We affirm.

FACTUAL AND PROCEDURAL HISTORY

In the late evening of December 28, 2014, Alhambra Police Officer David Munson patrolled northbound Garvey Avenue in a marked patrol vehicle. Rincon was also driving northbound on Garvey Avenue; he passed Munson's vehicle,

signaled a left turn, and then crossed through a two-way left-turn lane into the driveway of a motel. Munson believed that Rincon did not signal the left turn for 100 feet, or properly turn from the left-turn lane. For these reasons, he effected a traffic stop. A dashboard camera in Munson's patrol vehicle recorded Rincon's left turn and the traffic stop.

During the traffic stop, Rincon displayed symptoms of alcohol intoxication. He failed field sobriety tests and was driving with a suspended driver's license. A search of Rincon's vehicle by another officer disclosed three bindles of cocaine base and drug paraphernalia.

Rincon was charged with driving under the influence of alcohol within 10 years of a prior felony driving-under-the-influence conviction, driving with a 0.08 percent blood alcohol content within 10 years of a prior felony driving-under-the-influence conviction, and misdemeanor possession of cocaine, among other misdemeanor charges and two prior prison term allegations.

Motion to Suppress

Rincon filed a motion to suppress the police observations of his intoxication and the physical evidence obtained during his detention. He asserted that the factual circumstances known to Munson did not support a reasonable suspicion of any Vehicle Code violation. The trial court held an evidentiary hearing and viewed the dashboard camera recording.

Munson testified that he followed four to eight car lengths behind Rincon along Garvey Avenue. There were two traffic lanes in each direction and a two-way left-turn lane in the center. Past the intersection of Garvey and Carlos Avenues, Rincon drove into a motel driveway in a "sweeping" fashion,

rather than entering the left-turn lane and turning from that lane. Munson stated: “[Rincon] didn’t fully enter [the left-turn] lane. He made his left turn into the driveway here from this [number one traffic] lane.” Munson also believed that Rincon had not activated his turn signal for 100 feet prior to the left turn.

Defense witness Michael Wolf, a private investigator and former police officer, took measurements of the left-turn lane. The distance from the start of the left-turn lane to the motel driveway was approximately 115 feet. Wolf also viewed the dashboard camera video recording and opined that Rincon activated his left-turn signal prior to the beginning of the left-turn lane.

Following the testimony, the trial court’s viewing of the dashboard camera recording, and the parties’ arguments, the court denied Rincon’s suppression motion. The trial judge stated: “As far as the turn signal, it is really hard to tell, based on the video, because turn signals go off and on. Obviously, they blink. . . . [T]hat doesn’t have to necessarily be decided . . . because it does appear fairly obviously in the video that [Rincon] did not utilize the left-turn lane, the middle section He could have just slowed down, taken his time and done a more deliberate turn instead of . . . a sloppy left over the middle and into that driveway. He was more in a hurry to get in there. . . . [H]e didn’t take the time to make the extra maneuver of getting into that middle lane, which is required by the Vehicle Code.”

Pitchess Motion

The trial court denied Rincon’s motion to discover the personnel records of Munson.

Plea and Sentencing

On June 24, 2015, Rincon received advice of and waived his constitutional rights and right to a preliminary examination. He then pleaded nolo contendere to driving with a 0.08 percent blood alcohol content within 10 years of a prior driving-under-the-influence conviction. (Veh. Code, §§ 23152, subd. (b), 23550.5.) In accordance with a plea agreement, the trial court sentenced Rincon to 11 months confinement in county jail followed by 25 months of mandatory supervision. The court also imposed a \$300 restitution fine, a \$300 parole revocation restitution fine (suspended), a \$40 court security assessment, and a \$30 criminal conviction assessment; awarded Rincon 358 days of presentence custody credit; and dismissed four remaining charged counts and two prior prison term allegations. (Pen. Code, §§ 1202.4, subd. (b), 1202.45, 1465.8, subd. (a); Gov. Code, § 70373.)

Rincon filed a notice of appeal and obtained a certificate of probable cause from the trial court. On appeal, he contends that: 1) the trial court abused its discretion by denying his motion to discover the personnel records of the police officer involved in his detention and arrest (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531), and 2) the trial court erred by denying his motion to suppress the evidence obtained from his asserted illegal detention.

DISCUSSION

I.

Rincon argues that the trial court abused its discretion by denying his motion to discover Munson's personnel records, the police officer involved in his detention and arrest. (*Pitchess v. Superior Court, supra*, 11 Cal.3d 531.) He points out

that his *Pitchess* motion requested complaints of officer misconduct, including false arrest, fabrication of police reports, and dishonesty. In support of the motion, Rincon's attorney declared that he was informed that Munson illegally effected a traffic stop without reasonable cause.

A defendant must establish good cause for discovery of a police officer's confidential personnel records that contain information relevant to the defense. (*Pitchess v. Superior Court*, *supra*, 11 Cal.3d 531, 537-538.) Good cause is a "relatively low threshold" and requires a showing that 1) the personnel records are material to the defense, and 2) there is a stated reasonable belief that the records contain the type of information sought. (*People v. Thompson* (2006) 141 Cal.App.4th 1312, 1316.) Good cause contemplates "a logical link between the defense proposed and the pending charge." (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1021.)

Defendant must also establish a plausible factual foundation for his defense. (*Warrick v. Superior Court*, *supra*, 35 Cal.4th 1011, 1025.) To do so, the defendant "must present . . . a specific factual scenario of officer misconduct that is plausible when read in light of the pertinent documents." (*Ibid.*) A scenario sufficient to establish a plausible factual foundation "is one that might or could have occurred. Such a scenario is plausible because it presents an assertion of specific police misconduct that is both internally consistent and supports the defense proposed to the charges." (*Id.* at p. 1026.)

Depending on the circumstances of the case, the denial of facts described in the police report may establish a plausible factual foundation. (*Warrick v. Superior Court*, *supra*, 35 Cal.4th 1011, 1024-1025.) The factual scenario need not be

reasonably likely, persuasive, or even credible. (*Id.* at pp. 1025-1026; *People v. Thompson, supra*, 141 Cal.App.4th 1312, 1318.)

The trial court denied discovery of Munson's personnel records because Rincon did not establish good cause for disclosure. The trial judge stated: "As to the allegation that the stop or the probable cause for the stop was falsified in some way, the problem that I have is that you say that it was, I guess, exaggerated or didn't occur that way. But nowhere in your declaration do you describe how, in fact, the stop occurred."

We conclude that the trial court reasonably decided that Rincon did not present a specific factual scenario that is plausible in light of the pertinent documents and undisputed circumstances. (*People v. Thompson, supra*, 141 Cal.App.4th 1312, 1316.) Rincon's attorney made a bare assertion that the police report was untruthful; he did not explain how Rincon's left turn did not provide Munson with a reasonable suspicion to effect a traffic stop. Indeed, during oral argument of the motion, Rincon's attorney conceded that Rincon made a "diagonal" left turn and the court viewed a dashboard camera recording of the left turn. The court did not abuse its discretion by denying discovery of the personnel files. (*Eulloqui v. Superior Court* (2010) 181 Cal.App.4th 1055, 1069 [bare assertion that police officer fabricated evidence does not establish sufficient factual foundation to support good cause for in camera review of personnel file].)

II.

Rincon argues that Munson lacked the requisite reasonable suspicion to effect a traffic stop because the left-hand turn into the motel driveway did not violate Vehicle Code section

22100, subdivision (b).¹ He asserts that the statute does not prohibit “diagonal” entry into a left-hand turn lane or require a complete “textbook” entry into the lane prior to a turn.

Section 22100 provides: “Except as provided in Section 22100.5 [“U-turn at controlled intersection”] or 22101 [“Regulation of turns at intersections”], the driver of any vehicle intending to turn upon a highway shall do so as follows: [¶] . . . (b) Left Turns. The approach for a left turn shall be made as close as practicable to the left-hand edge of the extreme left-hand lane or portion of the roadway lawfully available to traffic moving in the direction of travel of the vehicle and, when turning at an intersection, the left turn shall not be made before entering the intersection.”

The Fourth Amendment protects against unreasonable searches and seizures. (U.S. Const., 4th Amend.; *Navarette v. California* (2014) - U.S. - [188 L.Ed.2d 680, 686]; *People v. Suff* (2014) 58 Cal.4th 1013, 1053-1054.) A detention is reasonable pursuant to the Fourth Amendment when the detaining officer can point to specific articulable facts that, in light of the totality of circumstances, provide some objective manifestation that the person detained may be involved in criminal activity. (*Navarette*, at p. - [188 L.Ed.2d 680, 686]; *Suff*, at pp. 1053-1054.) Ordinary traffic stops are investigatory detentions for which law enforcement officers must articulate specific facts justifying the suspicion that a crime is being committed. (*Suff*, at p. 1054; *People v. Letner and Tobin* (2010) 50 Cal.4th 99, 145.)

¹ All statutory references in II. are to the Vehicle Code unless stated otherwise.

The motivations of the detaining police officer are irrelevant to the reasonableness of a traffic stop. (*People v. Suff*, *supra*, 58 Cal.4th 1013, 1054.) “All that is required is that, on an objective basis, the stop “not be unreasonable under the circumstances.”” (*Ibid.* [motorist violated Vehicle Code by not signaling turn].) A traffic stop is lawful at its inception if it is based on a reasonable suspicion that any traffic violation has occurred, even if it is ultimately determined that no violation occurred. (*Brierton v. Department of Motor Vehicles* (2005) 130 Cal.App.4th 499, 510.) Moreover, pretextual traffic stops are not unlawful. (*Whren v. United States* (1996) 517 U.S. 806, 812-813; *id.* at p. 812 [constitutionality of traffic stop does not depend on “ulterior motive” of officer involved]; *People v. Gallardo* (2005) 130 Cal.App.4th 234, 238 [after officer stopped and detained motorist for broken taillight, officer received motorist's consent to search vehicle for weapons or narcotics].)

In reviewing the trial court's ruling on a suppression motion, we defer to the court's express and implied factual findings that are supported by substantial evidence. (*People v. Suff*, *supra*, 58 Cal.4th 1013, 1053; *People v. Letner and Tobin*, *supra*, 50 Cal.4th 99, 145.) To determine whether the search or seizure is reasonable pursuant to the Fourth Amendment, we exercise our independent judgment. (*Ibid.*)

In the exercise of our independent judgment, we conclude that the traffic stop here was constitutionally reasonable.² Rather than entering the center turn lane and making a left turn “as close as practicable to the left-hand edge”

² Our independent review includes our review of the dashboard camera recording and defense photograph exhibits “A” and “B.”

of the roadway, Rincon cut across the center lane and only entered that lane because it was necessary to traverse it to reach the motel driveway. (§ 22100, subd. (b).) Objectively, it was not unreasonable for Munson to cause a traffic stop and detain Rincon for a left-hand turn violation. (*People v. Suff, supra*, 58 Cal.4th 1013, 1054 [general statement of rule].)

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Cathryn F. Brougham, Michael Villalobos, Judges

Superior Court County of Los Angeles

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